

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-0067

XENGXAI YANG,

Defendant.

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL TO APPEAL

On February 5, 2021, Defendant Xengxai Yang was sentenced to 168 months in the custody of Bureau of Prisons for armed bank robbery, brandishing a firearm in relation to a crime of violence, and possession of a short-barreled rifle, in violation of 18 U.S.C. §§ 2113(a) and (d), 18 U.S.C. §§ 924(c)(1)(A)(ii) and (B)(I), and 26 U.S.C. §§ 5841, 5845(a), 5861(d), and 5871. Dkt. No. 49. No appeal was taken. On October 18, 2021, the defendant filed a “Motion to Appoint Counsel to Appeal Sentence.” Dkt. No. 52. The Court will construe his motion as a motion for appointment of counsel and motion for an extension of time to appeal. The motion is denied.

Yang was represented by counsel throughout his case. His motion consists of one paragraph with no detail regarding any attempts to timely appeal. Any extension of the time to appeal in a criminal case is governed by Federal Rule of Appellate Procedure 4(b)(4), which states:

Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Fed. R. App. P. 4(b)(4).

The defendant is clearly not entitled to an extension of time under this provision because his motion was filed more than thirty days after the time prescribed by Rule 4(b) expired. Rule 4(b) states that a defendant in a criminal case must file a notice of appeal within 14 days of the judgment or order being appealed. The judgment of conviction in this case was entered on February 5, 2021. Dkt. No. 49. The defendant's time to appeal expired on February 19, 2021. Since more than thirty days have elapsed since that date, the Court has no authority to extend his time to appeal. Waiting more than seven months before filing a Notice of Appeal would not constitute excusable neglect. Accordingly, to the extent that Yang seeks to appeal at this stage, any extension of the time to appeal is denied. It follows, therefore, that any motion for appointment of counsel is denied as well.

SO ORDERED at Green Bay, Wisconsin this 19th day of October, 2021.

s/ William C. Griesbach

William C. Griesbach
United States District Judge